

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration Nos.: **3,934,735; 4,059,038**

For the Marks: **H HEROES UNLIMITED; HEROES UNLIMITED**

Registration Dates: **03/22/2011; 11/22/2011**

PALLADIUM BOOKS, INC.,

Petitioner,

v.

ALEXANDER LEUNG,

Registrant.

Cancellation No. _____

77253096
85234928

CONSOLIDATED PETITION FOR CANCELLATION

Palladium Books, Inc. ("Palladium" or "Petitioner"), by and through its undersigned attorney of record, for its Consolidated Petition for Cancellation against Alexander Leung ("Registrant") pursuant to TBMP § 305.01, states as follows:

A. Registrant and the Registered Marks

1. Registrant is listed on the USPTO's TESS database as owner of record of the following trademarks:

H HEROES UNLIMITED, Reg. No. 3,934,735, in Class 016 for "comics" (word mark with design); registered on 03/22/2011 (the "'735 mark"); and

HEROES UNLIMITED, Reg. No. 4,059,038, in Class 016 for "Comics" (word mark only); registered on 11/22/2011 (the "'038 mark");

(each a "Registered Mark"; collectively, the "Registered Marks").

02/04/2013 SGNIM1 00000002 501454 3934735

01 FC:6401 300.00 DA

02/04/2013 SGNIM1 00000003 501454 4059038

01 FC:6401 300.00 DA



02-01-2013

U.S. Patent and Trademark Office #72

2. The '038 mark consists solely of the word mark HEROES UNLIMITED. The '735 mark consists of the words HEROES UNLIMITED, in stylized font, accompanied by a circular design element containing a stylized version of the letter "H" (as exemplified in the drawing below).



3. The dominant element of the '735 mark is the word element "Heroes Unlimited."

4. Registrant claims the date of first use of each of the Registered Marks as 01/02/2011.

5. Registrant's address of record for each of the Registered Marks is listed as:

Alexander Leung
12706 Venice Blvd. #5
Los Angeles, CA 90066

B. Petitioner and Petitioner's Mark

6. Petitioner is a Michigan corporation, doing business nationally and internationally since 1981. Petitioner's principal place of business is:

Palladium Books, Inc.
39074 Webb Ct.
Westland, MI 48185

7. Palladium is a worldwide leader in the creation and publication of books in the fantasy and science fiction genre, as well as the creation and publication of role playing games in those same genres. Palladium is also the owner of numerous registered and/or common law trademarks.

8. Palladium markets its books and games through a variety of online channels, including through its website located at www.palladiumbooks.com, as well as through wholesale distributors and brick and mortar retail channels.

9. The home page of Palladium's website contains a drop-down showing the variety of products offered for sale through Palladium's online catalog. This includes a series of books marketed under the trademark HEROES UNLIMITED™. (See **EXHIBIT 1** hereto.)

10. As exemplified in Palladium's link to its online "Store," Palladium currently publishes a series of books and games under both the HEROES UNLIMITED title directly, but also under other titles that are designed to interrelate to the HEROES UNLIMITED books and are clearly advertised as doing so (collectively, the "Heroes Unlimited Series"). (See **EXHIBIT 2** hereto, printouts of pages from Palladium's online store.)

11. The first book in the Heroes Unlimited Series was published in 1984 and Palladium has been continuously marketing and expanding the Series. As noted in the description of the "Heroes Unlimited™ RPG, 2nd Edition":

There has never been a single superhero RPG book, like Heroes Unlimited, that enables players to create virtually every type of hero imaginable ... Mutants, superhumans, alien visitors, super-sleuths, weapon masters, cyborgs, robots, psychics, masters of the mystic arts, super-soldiers, genius inventors, and even crazy heroes.

(See Exhibit 2 at pg. 2.)

12. Also, as noted in the description of the "Heroes Unlimited™ G.M.'s Guide," the Heroes Unlimited Series is designed to provide "comic book style heroic adventure." (See Exhibit 2 at pg. 8.

13. As further illustrated by the Palladium online catalog, other offerings in the Heroes Unlimited Series are designed to complement and expand upon the science fiction and fantasy

world created in the original Heroes Unlimited. For example, the cover for Aliens Unlimited reads:

Palladium Books® Presents
A Sourcebook for Heroes Unlimited™
Aliens
Unlimited™ Revised

As further described in the catalog commentary: “**Aliens Unlimited™** brings alien beings to your Earth-based *Heroes Unlimited™* setting and enables you to take your Earth heroes to alien worlds. (See Exhibit 2 at pg. 10.)

14. Similarly, a new series of Palladium books entitled “Powers Unlimited” is specifically designed to integrate with the Heroes Unlimited Series, as noted on the cover of the first Powers Unlimited book:

Palladium Books® Presents
POWERS
UNLIMITED
A sourcebook for Heroes Unlimited™

The descriptive commentary to the Powers Unlimited series notes:

Hollywood loves super-heroes and so do we. Powers Unlimited One explores new potential super abilities by presenting scores of Minor and Major super abilities. Put more oomph into your Heroes Unlimited characters.

(See Exhibit 2 at pg. 15.)

15. As illustrated above and through Exhibits 1 and 2, Palladium has been marketing and expanding upon its Heroes Unlimited Series of books for more than 25 years; its Heroes Unlimited Series currently contains at least 15 books; and the nature of the Heroes Unlimited Series is to present fantasy and science fiction adventures and games in a “comic book style” setting.

C. Registrant's Unauthorized and Confusing Use of Palladium's Mark

16. Registrant has obtained registrations for the mark HEROES UNLIMITED in Class 016 for use on "comic books." Registrant claims to have first used the mark in this regard on or about January 2, 2011, approximately 27 years after Palladium's first use of the mark.

17. The mark HEROES UNLIMITED has become identified with Palladium through Palladium's consistent use of the mark in commerce over the past 28 years.

18. Registrant neither sought nor obtained permission from Palladium to use the HEROES UNLIMITED mark on comic books or in connection with any other goods or services.

19. Pursuant to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"):

A plaintiff may raise any available statutory ground for opposition or cancellation that negates the defendant's right to registration.

TBMP §309.03(c).

20. Among the grounds listed in the TBMP as valid grounds for bringing a petition for cancellation is that:

defendant's mark so resembles a mark registered in the Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the defendant, to cause confusion, or to cause mistake, or to deceive.

TBMP §309.03(c)(1) citing Trademark Act § 2(d), 15 U.S.C. § 1052(d).

21. Palladium uses the HEROES UNLIMITED mark on books in the science fiction and fantasy genre, which are presented as "comic book style heroic adventure." Additionally, Palladium has licensed a number of intellectual properties from comic book

publishers, and produced cross-over products relating to those comic books, for use with Heroes Unlimited. Palladium has also retained the services of various well-known comic book artists to create art used in connection with the Heroes Unlimited Series.

22. Registrant's use of Palladium's HEROES UNLIMITED mark on comic books is likely to mislead and cause confusion among the consuming public as to the source of Registrant's goods and/or as to some affiliation of Registration with Palladium and/or as to Palladium's endorsement or approval of Registrant's goods.

D. Petitioner is being Harmed by the Maintenance of the Registered Marks on the Principal Register.

23. Finally:

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged . . . by the registration of a mark on the principal register established by this chapter

15 U.S.C. §1064 [Trademark Act §14].

24. A person, including a corporation (*see* 15 U.S.C. § 1527), can show "damage"

by showing that it has a "real interest" in the case, that is, a legitimate personal interest in the outcome of the proceeding and a reasonable basis for its belief in damage. To plead a "real interest," plaintiff must allege a "direct and personal stake" in the outcome of the proceeding.

TBMP §303.03.

25. Here, Petitioner has been using its common law mark continuously and exclusively for 28 years. Registrant has registered the identical mark for use on goods that are closely and directly related to the goods on which Palladium uses the mark.

26. Registrant's use of the Registered Marks on such goods will cause a likelihood of confusion among the confusion public and will subject Palladium's goodwill in its long-time mark to uncontrolled uses of a junior user of the mark.

27. Thus, Petitioner has a direct and personal stake in the cancellation of the Registered Marks.

WHEREFORE, for all the foregoing reasons, Petitioner respectfully requests that the Board grant its Consolidated Petition to cancel Registrant's Marks.

Respectfully submitted,

By: //Peter M. Falkenstein//
Peter M. Falkenstein
Jaffe Raitt Heuer & Weiss, P.C.
201 S. Main St., Suite 300
Ann Arbor, Michigan 48104
(734) 222-4776
pfalkenstein@jaffelaw.com

*Attorneys for Petitioner Palladium
Books, Inc.*

Date: January 16, 2013

Exhibit 1

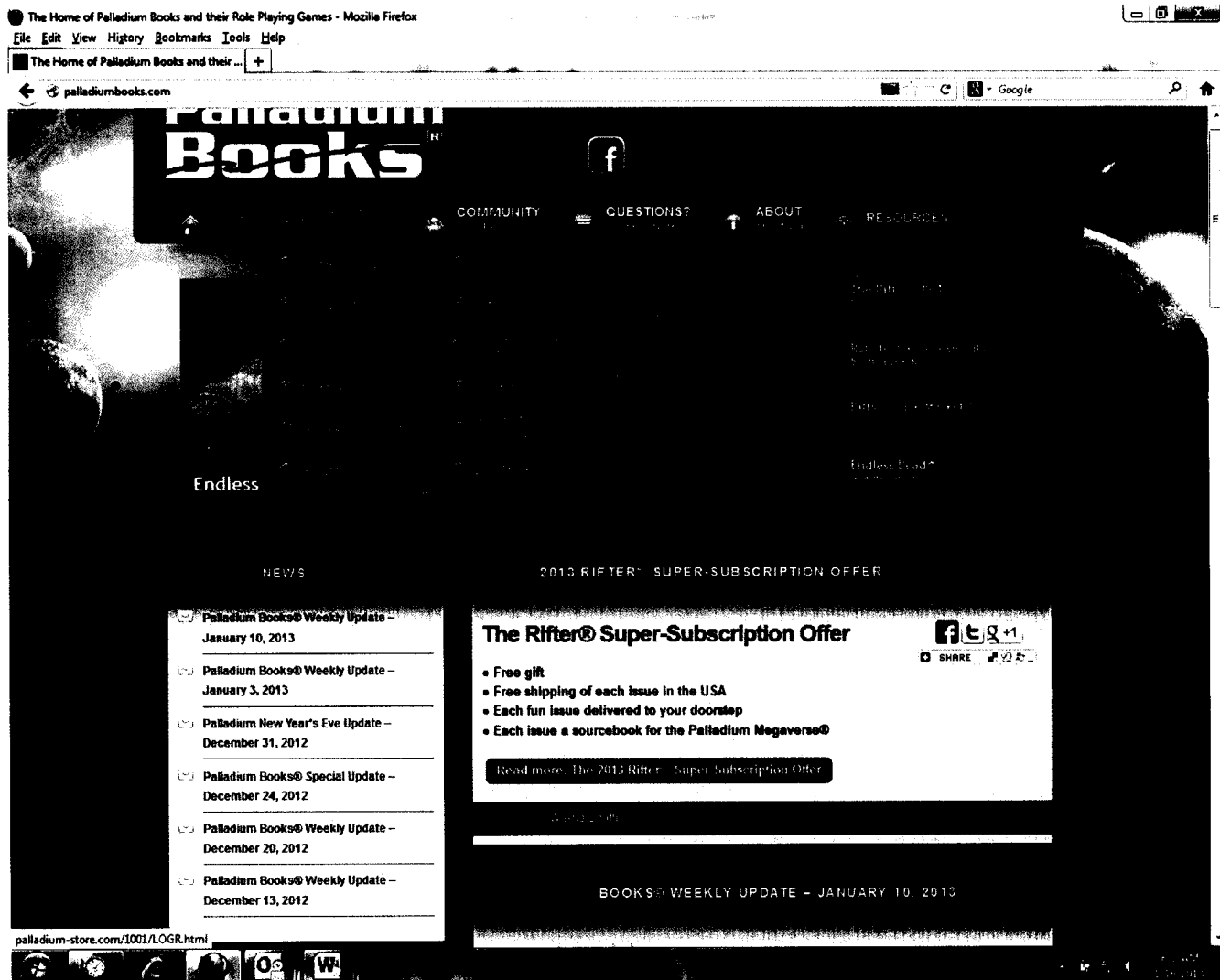


Exhibit 2

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Special Items

Heroes Unlimited™ RPG, 2nd Edition



Code: 500
Price: \$26.95
Shipping Weight: 2.50 pounds
In Stock
Quantity in Basket: None

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Heroes Unlimited™ RPG 2nd Edition

There has never been a single superhero RPG book, like Heroes Unlimited, that enables players to create virtually every type of hero imaginable ... Mutants, superhumans, alien visitors, super-sleuths, weapon masters, cyborgs, robots, psychics, masters of the mystic arts, super-soldiers, genius inventors, and even crazy heroes.

Heroes Unlimited, 2nd Edition, there ain't nothing like it. But don't take our word for it. Pick up a copy and see for yourself.

- **Creation rules for virtually every genre of hero.**
- **Over 100 super-abilities plus special skills and genius.**
- **Cyborg and robot hero creation rules.**
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- **Secret identities and secret organizations.**
- **Rules clarifications, tweaks and additional information.**
- **New, dynamic Steranko cover and new interior art.**
- **Adventure ideas, guidelines and tons of fun.**
- **Compatible with Rifts® and the entire Palladium Megaverse™.**
- **Written & created by Kevin Siembieda.**
- **Additional material by Wayne Breaux Jr.**
- **352 pages**
- **Cat. No. 500 - I.S.B.N. 1-57457-006-4**

Quantity: 1

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Related Item(s)



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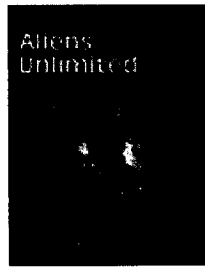
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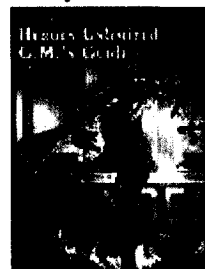
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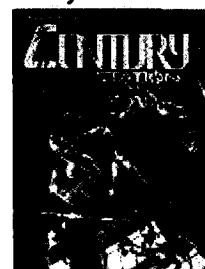
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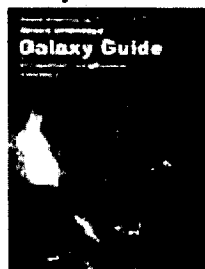
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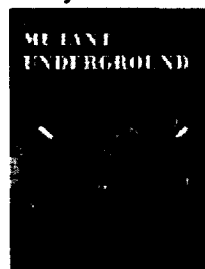
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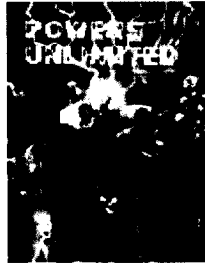
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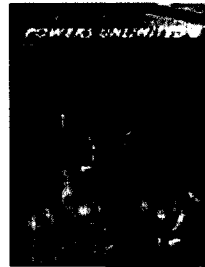
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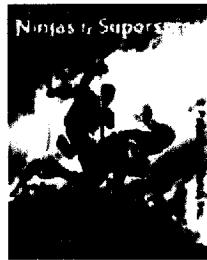
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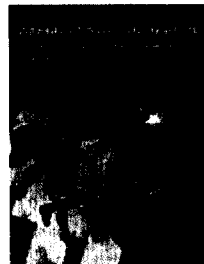
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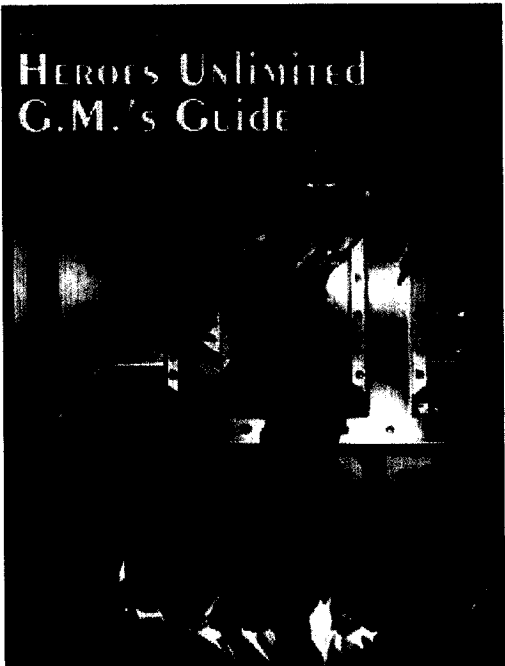
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- **Game Master (and player) tips.**
- **Rampage combat rules - new!**
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- **Quick roll Villains!**
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- **Anti-Heroes and tips on playing in character.**
- **Superbeings as lawmen and alignment guidelines.**
- **Tips on how to build and run adventures.**
- **Ten full adventures and ideas for more.**
- **Written by Kevin Siembieda & Wayne Breaux Jr.**
- **224 pages.**
- **Cat. No. 516**
- **I.S.B.N. 1-57457-035-8**

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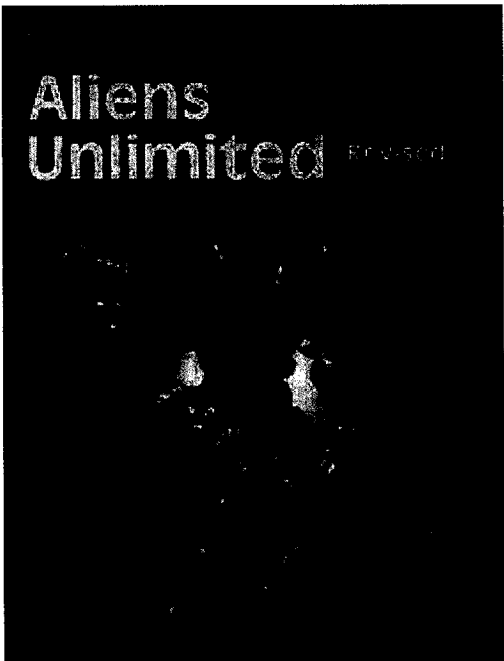
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Aliens Unlimited™

Aliens Unlimited™ brings alien beings to your Earth-based *Heroes Unlimited*™ setting and enables you to take your Earth heroes to alien worlds. This sourcebook has everything you need to launch an alien based campaign or

galactic adventures, or introduce alien invaders, villains, heroes and campaign ideas.

Aliens Unlimited™ makes the perfect resource and companion to the **Thundercloud Galaxy™** or any of the **Rifts® Dimension Books** and **Minion War™** series. Looking for some new space aliens, villains and monsters to add to your **Thundercloud Galaxy™** or **Minion War™** campaign? Need some unique Splugorth slaves? Demon henchmen? Take a look at **Aliens Unlimited™** (and the **Aliens Unlimited™ Galaxy Guide™** companion sourcebook); easy to adapt.

- **85 alien races/R.C.C.s., plus a bonus alien.**
- **15 alien monster races, plus NPC villains.**
- **Galactic Organizations (Atorian Empire and more).**
- **Rules and tables for *Creating Alien Characters*, including an expanded Alien Appearance & Bonuses Table, Reason for Coming to Earth, Equipment, Special Vehicles and more.**
- **90+ weapon stats including high-tech bows and arrows, Cold Weapons, Energy Weapons, Incendiary Weapons, Sonic Weapons, Conventional Firearms, and a wide range of Kisentite Blade Weapons and Vibro-Blade Weapons.**
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- **A handful of vehicles and miscellaneous equipment.**
- **UFO watch groups, alien spies, NPCs and more.**
- **Suggestions, rules and information for your galactic campaigns.**
- **Plus some super abilities, spell magic and psionics.**
- **Adaptable to *Rifts®*, *Phase World®* and *Rifts® Dimension Books™* complete with conversion notes for *Rifts®*.**
- **Written by Wayne Breaux Jr., additional text by Siembieda.**
- **208 pages – Cat. No. 515.**

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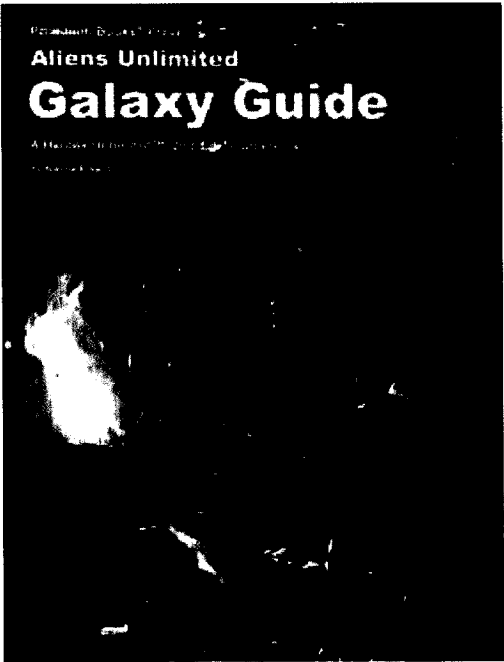
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Aliens Unlimited™ Galaxy Guide™

For Heroes Unlimited™

Highlights Include:

- Spaceship construction rules.
- Space travel and combat rules.
- New skills and skill programs.
- New alien races, monsters and menaces.
- More information on old enemies like the Raithenor.
- More on the Atorian Empire and the TMC.
- Galactic time-line and overview of the galaxy.
- Key places and adventure ideas.
- Cat. No. 519
- Page Count: 224 pages.
- Cover by: Wayne Breaux Jr.
- Interior Art: Wilson, Williams, and Breaux.
- Written by: Wayne Breaux Jr. with additional text by Coffin & Siembieda.

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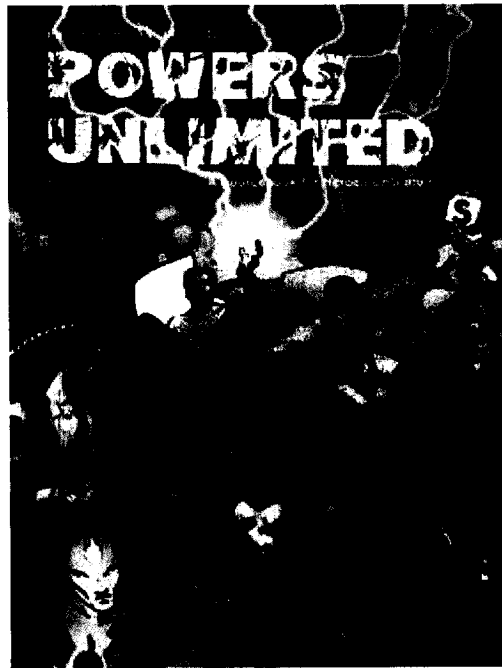
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Powers Unlimited™ One



Code: 521

Price: \$16.95

Shipping Weight: 1.50 pounds

In Stock

Quantity in Basket: None

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Powers Unlimited™ One

Hollywood loves super-heroes and so do we. Power Unlimited One explores new potential super abilities by presenting scores of Minor and Major super abilities. Put more oomph into your Heroes Unlimited characters.

Over 160 new super abilities, plus power subsets and other data.

Cat. No. 521

Page Count: 96 pages

Cover: Ramon Perez

Also see [Powers Unlimited Two](#) and [Powers Unlimited Three](#).

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration Nos.: **3,934,735; 4,059,038**

For the Marks: **H HEROES UNLIMITED; HEROES UNLIMITED**

Registration Dates: **03/22/2011; 11/22/2011**

PALLADIUM BOOKS, INC.,

Petitioner,

v.

ALEXANDER LEUNG,

Registrant.

Cancellation No. _____

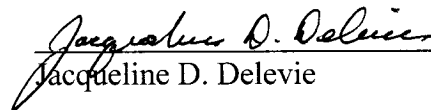
CERTIFICATE OF SERVICE

Jacqueline D. Delevie, being duly sworn, states that she is employed by the firm of Jaffe Raitt Heuer & Weiss, PC, and that on January 30, 2013 she served a copy of Palladium Books, Inc.'s *Consolidated Petition for Cancellation* upon:

Alexander Leung
12706 Venice Blvd., #5
Los Angeles, CA 90066

via Federal Express delivery service.

Dated: January 30, 2013


Jacqueline D. Delevie



201 S. MAIN STREET, SUITE 300 • ANN ARBOR, MICHIGAN 48104-2176
PHONE 734.222.4776 • FAX 734.222.4769
www.jaffelaw.com

Peter M. Falkenstein
pfalkenstein@jaffelaw.com

January 30, 2013

VIA FEDERAL EXPRESS

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Madison East – Concourse Level
Rm. C55
600 Dulany St.
Alexandria, VA 22314

Re: *Palladium Books, Inc.'s Consolidated Petition for Cancellation*

To the Trademark Trial and Appeal Board:

Enclosed please find Petitioner Palladium Books, Inc.'s Consolidated Petition for Cancellation of registration numbers 3,934,735 and 4,059,038, along with exhibits 1 and 2 to the Petition. I attempted to file these documents online via the ESTTA system, but was unable to successfully do so.

Please charge the \$600.00 filing fee for this Petition to the Jaffe Raitt Heuer & Weiss P.C. Deposit Account. The account number is 501454, and the passcode is 0888. I am an authorized signatory on the account.

Simultaneously with this filing, we are serving the Petition and exhibits on the registrant via Federal Express at the address stated in paragraph 5 of the Petition.

If you have any questions, please feel free to contact me at any time.

Very truly yours,

Jaffe, Raitt, Heuer & Weiss
Professional Corporation

Peter M. Falkenstein

PMF/jdd
Enclosures